

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

ALONZO FREEMAN, JR.,

Petitioner,

vs.

WARDEN, LEBANON CORRECTIONAL  
INSTITUTION,

Respondent.

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Case No. 3:03cv145

JUDGE WALTER HERBERT RICE

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DECISION AND ENTRY ADOPTING REPORT AND RECOMMENDATIONS  
OF UNITED STATES MAGISTRATE JUDGE (DOC. #10) IN THEIR  
ENTIRETY; PETITIONER'S OBJECTIONS TO SAID JUDICIAL FILING  
(DOC. #13) OVERRULED; JUDGMENT TO ENTER IN FAVOR OF  
RESPONDENT AND AGAINST PETITIONER, DENYING PETITION FOR  
WRIT OF HABEAS CORPUS; CERTIFICATE OF APPEALABILITY TO  
ISSUE; LEAVE TO APPEAL *IN FORMA PAUPERIS* GRANTED;  
TERMINATION ENTRY

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Based upon the reasoning and citations of authority set forth by the United States Magistrate Judge, in her Report and Recommendations filed May 11, 2006 (Doc. #10), as well as upon a thorough *de novo* review of this Court's file and the applicable law, said Report and Recommendations are adopted in their entirety. The Petitioner's Objections to said judicial filing (Doc. #13) are overruled. Judgment will enter in favor of the Respondent and against Petitioner herein, denying the Petitioner's Petition for Writ of Habeas Corpus in its entirety.

Based upon the reasoning given by the United States Magistrate Judge in her Report and Recommendations (Doc. #10 at 24-26), a Certificate of Appealability is granted on Petitioner's claims that his trial and appellate counsel provided constitutionally ineffective assistance by not raising a federal constitutional challenge to the jury instructions on felonious assault, the Court concluding that reasonable jurists could disagree with both the decision of the Ohio Court of Appeals on Petitioner's Rule 26(b) and this Court's interpretation of same. Consequently, the Petitioner has made a substantial showing of the denial of a constitutional right. Given that this issue, upon which the Certificate of Appealability has been granted, is not objectively frivolous, this Court grants Defendant leave to appeal *in forma pauperis*.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

/s/ Walter Herbert Rice

September 22, 2006

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WALTER HERBERT RICE  
UNITED STATES DISTRICT JUDGE

Copies to:

Kevin M. Schad, Esq.  
Stephanie L. Watson, Esq.  
Thelma T. Price, Esq.

